

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

77-1081

B
PJS

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

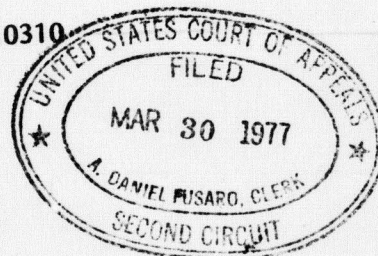
ALEXANDER GELFAND,

Defendant-Appellant.

*On Appeal from the United States Court
for the Eastern District of New York*

APPENDIX

JEROME V. GIOVINAZZO
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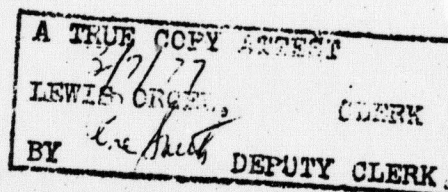
DOCKET ENTRIES

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
11/9/76		Before CHREIN, J.- Indictment filed.	
11-16-76		Before Weinstein, J.- Case Called. Deft. & Counsel present. Deft. arraigned and enters a plea of not guilty. Pre Trial Conference held and concluded. Deft. advised of conflict of interest. Case adjd. to 12-27-76 at 9:20 A.M. for Trial. Bail \$1,000.00 P.R.B.	
11-16-76		Notice of Appearance filed.	
11/18/76		Notice of Readiness for trial filed.	
12-29-76		Notice of Motion filed, ret. 12-7-76, for Inspection, Bill of Particulars, Inspection of Grand Jury Minutes etc.	
12-3-76		Govts affidavit in opposition filed to defts motion to suppress, etc.	
12-6-76		Copy of letter to counsel Jerome Giovanazzo filed received from Chambers from Samuel Dawson, Asst US Atty.	
12-7-76		Before Weinstein, J.- Case Called. deft. not present. Counsel present. Discovery motion argued and granted as indicated. So ordered.	

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW: IN SECTION V. ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(N)

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		Start Date	End Date	Code	Days
12/27/76	Before WEINSTEIN J. - Case called. Deft & Counsel present. Trial ordered and begun. Jurors selected and sworn. Trial continued to 12/28/76 at 9:30 a.m.				
12-28-76	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial resumed. Deft's. motion to suppress. Hearing ordered and begun. Deft's. motion to suppress is denied. Govt. sums up. Deft. opens Jurors sworn. Govt. rests. Deft's. motion to dismiss the indictment is denied. Trial continued to 12-29-76 at 9:30 A.M.				
12-29-76	Stenographer's Transcript dated December 28, 1976 filed.				
12-29-76	Before Weinstein, J.- Case Called. deft. & Counsel present. Trial resumed. Deft rests. Govt. rests. Deft's. motion to dismiss the indictment is denied. Govt. sums up. Deft. sums up. Mr. Carter in rebuttal. Court charged jury. Alternates discharged. Marshals sworn. Jury retired for deliberation. Orders of Sustenance signed (Coffee & Lunch) Jury returns and renders a verdict of not guilty as to count one (1) and GUILTY as to counts two, three and four. Jury polled and discharged. Deft's. motion to set aside the verdict is denied. Trial concluded. Sentence adjd. to 1-7-77 at 9:30 A.M.				
12-29-76	By Weinstein, J.- Order of Sustenance filed. (Cofee)				
12-29-76	By Weinstein, J.- Order of Sustenance filed. (lunch)				
1.21.77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Deft. sentenced to one (1) year and one (1) day imprisonment on each of counts 2, 3 and 4 to run concurrent and fined \$7,500.00 on each of counts 2, 3 and four to run concurrent for a total fine of \$7,500.00 Stay of execution of sentence pending appeal is granted.				
1.21.77	Judgment and Commitment filed. Certified Copies to Marshal and Probation.				
2/1/77	Notice of Appeal filed.				
2/1/77	Docket entrbs and duplicate of Notice of appeal mailed to the C of A.				
2-15-77	Stenographers transcript filed dated 12-28-76.				
2.25.77	Stenographer's Transcript dated 12.29.76 filed.				
3-7-77	Record on appeal certified and mailed to the court of appeals				

BEST COPY AVAILABLE



FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

ALEXANDER GELFAND,

Defendant.

----- X

THE GRAND JURY CHARGES:

INDICTMENT

Cr.No. _____
(T.21, U.S.C., §622)

WEINSTEIN, J.
76 CR 706

INTRODUCTION

1. The Federal Meat Inspection Act, enacted on December 15, 1967 as Title I of the Wholesome Meat Act requires the Secretary of Agriculture to provide for the inspection of establishments where meat and meat food products are processed.

2. At all times relevant to this Indictment, the Paulus Packing Co., Incorporated, located at 179 Fort Green Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

3. At all times relevant to this Indictment, the J. and N. Vorchheimer, Incorporated, located at 185 Fort Green Place, Brooklyn, New York, was engaged in interstate commerce

and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

4. At all times relevant to this Indictment, the Cumberland Provisions, Incorporated, located at 187 Fort Green Place, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

5. At all times relevant to this Indictment, the AAA Meat Provisions, Incorporated, located at 914 Pacific Street, Brooklyn, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program, pursuant to the Federal Meat Inspection Act.

6. At all times relevant to this Indictment, the defendant ALEXANDER GELFAND was an inspector, officer and employee of the United States Department of Agriculture, Meat and Poultry Inspection Program, authorized to perform the duties required by the Federal Meat Inspection Act of 1967.

COUNT ONE

From on or about and between the 29th day of July, 1975 and the 22nd day of August, 1975, ~~both dates being~~ approximate and inclusive, within the Eastern District of New York, the defendant ALEXANDER GELFAND, unlawfully, wilfully and knowingly did receive and accept from Paulus Packing Co., Incorporated, money and other things of value, namely, approximately Thirty Dollars (\$30.00) weekly. (Title 21, United States Code, Section 622).

COUNT TWO

From on or about and between the 28th day of July, 1975 and the 23rd day of August, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant ALEXANDER GELFAND, unlawfully, wilfully and knowingly did receive and accept from J. and N. Vorchheimer, Incorporated, money and other things of value, namely, approximately Fifty Dollars (\$50.00) weekly. (Title 21, United States Code, Section 622).

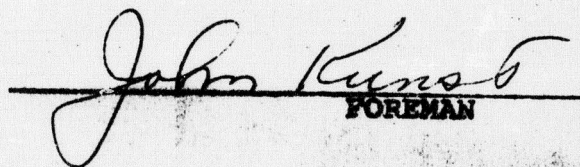
COUNT THREE

From on or about and between the 29th day of July, 1975 and the 23rd day of August, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant ALEXANDER GELFAND, unlawfully, wilfully and knowingly did receive and accept from Cumberland Provisions, Incorporated, money and other things of value, namely approximately Fifty Dollars (\$50.00) weekly. (Title 21, United States Code, Section 622).

COUNT FOUR

From on or about and between the 3rd day of August, 1975 and the 27th day of September, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant ALEXANDER GELFAND, unlawfully, wilfully and knowingly did receive and accept from AAA Meat Provisions, Incorporated, money and other things of value, namely, approximately Fifty Dollars (\$50.00) weekly. (Title 21, United States Code, Section 622).

A TRUE BILL


FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

JUDGMENT (Gelfand)

United States of America vs. **United States District Court for**
DEFENDANT **EASTERN DISTRICT OF NEW YORK**
ALEXANDER GELFAND DOCKET NO. **76 CR 706**

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
JANUARY 21st, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Jerome Giovannazzo, Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea.

☐ NOLO CONTENDERE.

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in counts two (2), three (3) and four (4)

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **violating T-21, U.S.C., Section 622**
in that from on or about and between the twenty-eighth day of July,
1975 and the twenty-seventh day of September, 1975, both dates being
approximate and inclusive, the defendant, unlawfully, wilfully and
knowingly did receive and accept from others, money and other things
of value namely, approximately Fifty Dollars (\$50.00) weekly.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **one (1) year and one (1) day** on each of counts two (2), three (3) and four (4) to run concurrent and fined **Seven Thousand Five Hundred Dollars (\$7,500)** on each of counts two (2), three (3) and four (4) to run concurrent for a total fine of **Seven Thousand Five Hundred Dollars (\$7,500.00)**. Stay of execution of sentence pending appeal is granted.

**SPECIAL
CONDITIONS
OF
PROBATION**

**ADDITIONAL
CONDITIONS
OF
PROBATION**

**COMMITMENT
RECOMMEN-
DATION**

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT, E.D. N.Y.

★ JAN 21 1977 ★

TIME A.M.
P.M.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

10

John B. White
Date *January 21, 1977*

JUDGMENT (Kramer)

United States of America vs.

United States District Court for

DEFENDANT

EASTERN DISTRICT OF NEW YORK

MURRAY KRAMER

DOCKET NO.

76 CR 705 (S)

JUDGMENT AND PROBATION/COMMITMENT ORDER

NO. 76-1074

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
JANUARY 28th, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Arthur Ferraro, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea.☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **violating T-18, U.S.C., Section 209 in that from on or about and between the seventh day of July, 1974, and the fourth day of January, 1975, both dates being approximate and inclusive, the defendant, an inspector, did knowingly and unlawfully receive and accept money from others, which money was received and accepted as compensation, and in consideration of the services of the defendant, and which money was in supplementation of the salary paid to the defendant by the United States Department of Agriculture.**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **1 year.**

The execution of sentence is suspended and the defendant is placed on probation for a period of 1 year and fined \$2,500.00 payable as the Probation Department directs. Special condition of probation is defendant to spend 3 months at a community treatment center. The defendant is to work during the day, report evenings and have weekends off. On motion of assistant United States attorney, Sam Dawson, the underlying Indictment is dismissed.

SENTENCE
OR
PROBATION
ORDER

SPECIAL
CONDITIONS
OF
PROBATION

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ FEB -1 1977 ★

TIME A.M. _____
P.M. _____

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

110

John B. Winters

Date

Jan. 28, 1977

CERTIFIED AS A TRUE COPY ON

THIS DATE

1128/77

BY

Ralph M. Davis

CLERK
DEPUTY

11
EXCERPTS FROM TRANSCRIPT OF TESTIMONY

3

Buxbaum - direct

H A R R Y B U X B A U M, , having been duly sworn by the

Clerk of the Court, took the witness stand, and

testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q Please keep your voice up so the ladies and gentlemen of the jury can hear you.

A Yes.

Q By whom are you employed, Mr. Bauxbaum?

A Cumberland Provision Company in Brooklyn.

Q What is your position in that company?

A President of the company.

Q How long has that company been in existence?

A 35, 40 years.

Q And what does the company do?

A Process different meat products.

Q Do you also sell meat products?

A Yes.

Q To whom do you sell these meat products?

A Institutions, butchers, jobbers, wholesalers, other wholesalers.

Q Do you obtain the meat that you sell to these other establishments from inside or outside the state of New York?

1 4 Buxbaum - direct

2 A Most of it from outside of the state.

3 Q Now, since 1967 have you been receiving
4 Federal inspections?

5 A Yes.

6 Q Did you apply to the Department of Agriculture
7 for inspection?

8 A Yes.

9 Q Did you receive inspection?

10 A Yes, sir.

11 Q Pursuant to that act, Wholesome Meat Act,
12 are inspectors of the Department of Agriculture assigned to
13 your establishment?

14 A Yes sir.

15 Q And was your establishment assigned a number?

16 A Yes.

17 Q What was that number?

18 A 5141.

19 Q Does your company have a procedure with respect
20 to sanitation?

21 A Yes, we do.

22 Q Could you describe those procedures to the jury?

23 A Every afternoon we'd finish work at approximately
24 2, 2:30; about 4, 5 men stayed for cleaning anywhere from
25 three quarters of an hour to an hour till we finished cleaning,

12

Buxbaum - direct

THE COURT: Yes. Don't lead the witness, please.

Q At those times when corrections were made and before payments were made, could you or could you not locate inspectors in order to secure their approval?

MR. GIOVANAZZI: Same objection, leading the witness.

THE COURT: Try not to lead, please.

Q What, if anything would occur after an inspector had pointed out that something had to be corrected?

A Well, many times we had to look for him in order to continue our operation because, I believe he has three, four other houses where he is, and I had 15, 20 butchers standing around waiting to go back to work, but we had to wait for the inspector to come back, so they take the string down, whatever you want to call it.

Q As I understand your testimony, until you secured his approval you could not operate?

A That is correct.

Q Specifically with respect to Mr. Gelfand, do you recall on what occasions -- I withdraw that.

On how many occasions did you pay money to Mr. Gelfand, approximately?

A I really don't know, because it's been quite a while ago since he worked for us. I really don't know how many

13

Buxbaum - direct

occasions; ten, fifteen, twenty, I really don't know.

Q Can you describe the circumstances under which you paid Mr. Gelfand?

A Somewhere in an empty room or in an office where nobody was present.

Q And on what days of the week would this occur?

A Most of the time on Friday.

Q Did there come a time when your company reached an agreement with the Government, with respect to your paying inspectors?

A I don't understand.

Q Did there come a time when you plead guilty, your company plead guilty in this Court?

A Yes, we did.

Q And was that pursuant to an agreement that you had reached with the United States Government?

A Yes.

Q And could you relate to the Court what the substance of that agreement was?

A My company was fined \$5,000 -- \$2,500, suspended sentence; \$2,500 to be paid within a year.

Q And pursuant to that agreement, were you required to advise the Government about meat inspectors to whom you were paying?

19

Buxbaum - cross

months, they go on vacation, they get reassigned. I very seldom had an inspector for 6 months.

Q You were asked by the prosecutor --

This is the only one we are interested in at this point (pointing to the defendant)?

A Yes.

Q He asked you how about Mr. Gelfand how many times was he paid by you, you said, "I don't remember, maybe 10, 15 or 20 times, something like that."

A I can answer you. I don't believe Mr. Gelfand was my inspector. He was 3, 4 times my inspector, but never for 6 months or so.

Q Let me go back to the original question. When the prosecutor asked you how many times did you pay off Mr. Gelfand, you stated 10, 15 or 20 times, I don't really remember; isn't that right? Was that your answer, yes or no?

A I'm answering that I told the prosecutor that I don't remember how many times, but I don't remember if it was 20 times or 30 times or 15 times.

(Continued on the next page)

20

Buxbaum - cross

Q Are you now denying the fact that you said when the question was put to you by the prosecutor with regard to Mr. Gelfand that you don't remember whether it was ten, fifteen or twenty times, sir?

A How many times I paid him?

Q Yes; you don't remember whether it was ten or fifteen or twenty times?

A I don't think it was ten, but fifteen or twenty times; that's correct.

Q That you paid Mr. Gelfand, that's what you said?

A That's what I said.

Q That's what I'm trying to get at, sir.

For the first ten times that you paid him, where did you pay him, tell the jury where you paid Mr. Gelfand the first ten times?

A Either in our office or in a hallway or someplace where no one was.

Q And you remember this and that's why you are testifying under oath; isn't that true?

A That's correct.

Q So either in your office or where else again?

A In a hallway.

Q Hallway?

A Or somewhere on the steps, or somewhere where

Q And there is no question in your mind that it was Mr. Gelfand, this man I am pointing to right here (indicating) that you were paying; isn't that correct?

A That's correct.

Q And when you answered the question of Mr. Carter, the prosecutor, you said I believe it was thirty dollars; is that correct?

A That's correct.

Q And there is no question in your mind that it was thirty dollars because you are testifying under oath; isn't that correct?

A I would like to inject this.

Q Just answer my questions. That's what you answered and that's what the amount is; yes or no?

A May I say something, your Honor?

THE COURT: Yes, you may.

THE WITNESS: I would like to say this attorney is questioning me on this thirty dollars that after Mr. Gelfand I had approximately 20 or 30 other inspectors, one got thirty, one got forty, one got fifty, one got twenty-five, therefore I said I don't remember whether it was thirty dollars or forty dollars or fifty dollars; that's what I would like to say.

Q Mr. Buxbaum, you paid Mr. Gelfand twenty times.

1 23

Buxbaum - cross

2 Don't you remember of those twenty times how much the amount
3 was? Is that what you are telling this jury?

4 A What the amount was? I told him I don't
5 remember if it was twenty dollars or forty dollars. It was
6 two or three years ago.

7 Q Now, are you saying it's either thirty or
8 forty, no question about it now. You paid him twenty times,
9 Mr. Buxbaum, you did it, I didn't do it, and that's your
10 testimony now?

11 A Yes.

12 Q Do you want to change that testimony?

13 A I don't want to change anything. Let me inject
14 this.

15 Q Don't inject anything until I put a question
16 to you, please. We'll come to it.

17 You talked to Mr. Dawson. did you not, as to
18 how much you allegedly paid Mr. Gelfand. Do you remember
19 talking to the young assistant U. S. Attorney, you spoke to
20 him on many occasions?

21 A Not many.

22 Q On some occasions?

23 A Yes.

24 Q You told him, "Mr. Gelfand I paid thirty dollars"
25 and now you say it might be forty dollars; that's what you told

27

Buxbaum - cross

represent other people. I represent Mr. Gelfand here, this meat inspector. Did you tell Mr. Dawson that he only worked for you less than one month and that you paid him 50 dollars?

A No, I didn't tell him that he worked less than one month for me.

Q May I have the notes?

MR. CARTER: You have the notes.

THE WITNESS: Mr. Gelfand worked for me before.

Q He worked for you before?

A I mean as an inspector.

Q Sir, didn't Mr. Gelfand work for you for 20 weeks?

A He did, over a period of years; yes, he did.

Q Could you tell me what years?

A I don't remember the years exactly.

Q Could you tell me the approximate years?

A I would say about three years ago.

Q About three years ago you would say?

A Yes, approximately.

Q Why didn't you tell Mr. Dawson that?

A I told Mr. Dawson what he asked me -- I don't know. He didn't question me exactly what time he worked for me.

Q He didn't -- he was charging this man with a --

MR. CARTER: Objection, your Honor as to the

33

Buxbaum - cross

paid inspectors and I don't remember --

Q You don't remember what you told Mr. Dawson --

A Let me finish, I let you finish.

I told Mr. Dawson that I don't remember how much I paid each inspector. This inspector got thirty or this inspector got forty or fifty, and furthermore I was put up here to tell the truth and that's what I am telling you.

Q With regard to the first time you allegedly paid Mr. Gelfand, do you remember that first time?

A If I remember the first time I paid him? Really I don't remember the first time.

Q Do you remember the 18th time?

A I remember I paid him. The first time, the 18th time, the 14th or 12th, I don't remember.

Q And you don't remember the amount?

A I've told you I don't remember --

THE COURT: Don't answer. Please, don't repeat.

Q Now, Mr. Buxbaum, with regard to the period of July 29th and almost a month later, August 23rd, 1975, they are the dates named in the indictment. Do you know how many days he actually worked in your place?

A I don't remember.

Q If I told you he only worked the 29th, the 30th,

the 31st and August 1.

the 31st and August 1, would you dispute that statement?

A I told you I don't remember.

Q Out of that entire --

MR. CARTER: Objection. The witness has answered. He's taking the opportunity to testify.

THE COURT: The jury understands it's not the questions, it's the answers that count. Lawyers don't have any information they can give you other than what's given from the witnesses or documents. Proceed.

Q That he worked August 18th, 19th, 20th and 21st for that entire month period, he worked 9 days, would you dispute that statement?

A I've told you I don't know how many days he worked?

Q Do you know whether you paid this man on August 5th or 9th or 11th?

A I don't know what date I paid him, but I know I paid him.

Q And you paid him 20 times?

A Not in '75. I didn't pay him no 20 times.

Q When?

A Before.

Q '74?

A '74 or '73. In '7 I only paid him when he

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Buxbaum - cross

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worked.

Q You are not sure whether it's '74 or '73?

A I don't know what year it was.

Q But you are sure it was Mr. Gelfand; you are not lumping together other inspectors?

THE COURT: Please don't repeat the same thing over and over again.

Q Didn't you name practically every inspector that worked for you?

A Did I name every inspector?

Q Practically every one?

A No.

Q How many did you name?

A I don't remember.

(Continued on the following page.)

3

A No.

Q Of all the names I had given you, did these people work for you for the last four, five months?

A No; none of them worked for me the last four or five months.

Q Tell me of all these payments that you paid, were they all done secretly sort of with nobody else around?

A That's correct.

Q By the way, sir, don't you own more than one company there?

A One company.

Q It's one company?

A Yes. We purchased some companies in the past.

Q Do you have different locations with different names?

A In the past years, but the business is done under one company.

Q Did you have three companies, one by the name of Cumberland; one by the name of S & D and one by the name of Stein?

A That's correct.

Q Now, where did you allegedly pay Mr. Gelfand, tell the jury?

A Cumberland Provision.

1 Q Now, don't you usually stay at Stein?

2 A It's right across the street. I go to both
3 places.
4

5 Q Cumberland Provisions; is that right?

6 A That's correct.

7 Q Is that what you told Mr. Dawson? Is that what
8 you told Mr. Dawson that you paid at Cumberland Provisions,
9 yes or no?

10 A I believe I did.

11 Q You're not sure?

12 A If I paid at Cumberland or Stein, it's the same
13 company, same principal, same office.

14 Q Do they have hallways there also?

15 A They have hallways all over.

16 Q All payments were made either in some hallway,
17 freezing unit, some out of the way place; is that correct?

18 A That's correct.

19 MR. GIOVANAZZI: I have no further questions.

20 THE COURT: Anything further?

21 MR. CARTER: Yes, your Honor.

22 THE COURT: Make it quick.

23 REDIRECT EXAMINATION

24 BY MR. CARTER:

25 Q You testified that you paid a number of meat

1 7
2 THE COURT: Would you do that at the next recess,
3 get together and write it out. Proceed with the
4 witness and correct it later.

5 The reasons we enter into these stipulations,
6 not we, the attorneys is to avoid the necessit of
7 bringing in witnesses from other places to testify
8 to these things. The Government has the burden of
9 proof. If defendant doesn't stipulate then the
10 Government has to prove it. If they can't stipulate,
11 we have to bring in the witness from wherever the
12 records are kept to testify to these facts. Proceed.

13 DIRECT EXAMINATION

14 BY MR. CARTER:

15 Q Mr. Vorcheimer, are you affiliated with a
16 company called J & M Vorcheimer?

17 A Yes, sir.

18 Q What is your connection with that company?

19 A I'm secretary/Treasurer of the company.

20 Q And where is that company located?

21 A 185-183 Fort Greene Place.

22 Q And who owns the company?

23 A My father, my brother and myself.

24 Q How long has that company been in operation?

25 A About 22 years.

8

Vorcheimer-direct

43

1

2

Q What do you do?

3

A Veal and lamb business.

4

Q What do you with the veal and lamb?

5

A We process it in the place and we take the skin

6

off and then merchandise it as to butchers, wholesalers.

7

Q And veal and lamb that you are talking about,

8

do you receive that veal and lamb from inside or outside the

9

State of New York?

10

A Mostly outside the state.

11

Q What are the dates of operation of your business?

12

A Monday to Friday, from 5:00 to 4:00.

13

Q What are the hours?

14

A From five to four in the morning.

15

Q How many employees do you have?

16

A About 20.

17

Q Now, since the enactment of the Wholesome Meat

18

Act, has your company been receiving meat inspections?

19

A Yes.

20

Q Pursuant to that Act, the Department of

21

Agriculture inspectors have been assigned to your establishment?

22

A Yes, sir.

23

Q Does your company have a procedure for sanitation?

24

A Yes.

25

Q Describe what that procedure is to the jury?

10

Vorcheimer-direct

45

2 A Yes.

3 Q Approximately how much money did you pay

4 Mr. Gelfand?

5 A \$50 a week.

6 Q Do you recall approximately how often you paid
7 those payments?

8 A Once a week. I can't recall exactly.

9 Q What days of the week would you make those
10 payments?

11 A Either on a Thursday or a Friday.

12 Q Was this ever Thursday or Friday?

13 A Yes.

14 Q Will you describe to the ladies and gentlemen
15 of the jury the circumstances under which you paid you made
16 these payments?

17 A What do you mean?

18 Q Where and when?

19 A In the hallway or in my office.

20 Q And did he ever ask you for these payments?

21 MR. GIOVANAZZI: I object to the leading at
22 this time.

23 THE COURT: I'll permit it. Ask him what was
24 said.

25 Q What, if anything was said between yourself and

1 11

2 Mr. Gelfand?

3 A You want to see me now or later.

4 Q Were those his words?

5 A Approximate words.

6 Q As a result of his saying do you want to see
7 me now or later, what did you do?8 A I saw him in my office or in the hallway and
9 paid him.10 Q When he made the statement, do you recall when
11 this occurred?

12 A During the course of the day.

13 Q Of a business day?

14 A Yes.

15 Q Were you required to make this payment by law?

16 A No.

17 Q And indeed were you aware that the making of
18 this payment was unlawful?

19 A Yes.

20 Q Did there come a time when Mr. Gelfand refused
21 to accept such a payment?

22 A No.

23 Q Now, before Mr. Gelfand was assigned to your
24 company as an inspector, were other inspectors also assigned
25 to your company?

14

Vorcheimer-direct

49

Q So you are saying --

MR. GIOVANAZZI: Objection, your Honor, he's leading the witness.

THE COURT: Sustained.

Q What was the purpose of the payment?

A So that the inspector would be available when the violation would be corrected.

Q Would there be incidents when the inspector was not available?

A Yes.

Q After you made payment to the inspector, would that situation correct itself?

A Yes.

Q Did there come a time when your company pled guilty to having paid inspectors?

A Yes.

Q As a result of your having pled guilty, did you reach an agreement with the Government?

A Yes.

Q Describe to the ladies and gentlemen of the jury what that agreement was?

A That we would no longer pay any inspectors and we would help the Government in any prosecution that they might have against any inspectors, whatever the sentence was.

15

Vorcheimer-direct

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Q Were you called upon to identify who the inspectors were that you were paying?

A Yes, sir.

MR. CARTER: I have no further questions.

CROSS-EXAMINATION

BY MR. GIOVANAZZI:

Q You first made the agreement, you personally would not be prosecuted and after which you named various inspectors; isn't that correct?

A Sir, I don't know if that was the order.

Q Didn't you talk with your attorneys?

A To my attorneys?

Q And didn't they tell you that you would not personally be prosecuted if you cooperated? Didn't they tell you or words to that effect, your own attorneys?

A He said that he would try to see to it.

Q Was he successful?

A Yes.

Q In other words, your company, you pled guilty for your company; is that right?

A Yes.

Q And you personally were not involved, you don't have any record now, do you?

A No.

1
2 Q Now, you say you made payments to Mr. Gelfand,
3 that's your statement, is it not?

4 A Yes.

5 Q How many payments did you make to Mr. Gelfand?

6 A As many weeks as he was my inspector.

7 Q How many weeks was that, sir?

8 A Six, seven weeks.

9 Q And you remember paying him at least six
10 or seven times, did you?

11 A Yes.

12 Q No question about that in your mind?

13 A I can't be specific in every week because I
14 don't remember who was my inspector every week.

15 Q But you remember the number of times?

16 A I said six or seven weeks.

17 Leave it with a question mark.

18 Q In other words, it might be more?

19 A It might be less.

20 Q How much more might it be?

21 A If I knew I wouldn't put a question mark on
22 it.

23 Q But you could visualize in your mind that you
24 paid Mr. Gelfand six or seven times, that's what you are
25 telling the Court?

2 1

2

This is very important.

3

A I'm not questioning you.

4

Q Six orseventimes. You could visualize that

5

in your mind, you paid off Mr. Gelfand?

6

A Yes.

7

Q And you recall talking to Mr. Dawson about

8

this case?

9

A Not this case as such.

10

Q You don't remember talking about Mr. Gelfand

11

at all?

12

A Just identifying his picture.

13

Q When you identified his picture, didn't Mr.

14

Dawson ask you how many times you paid him?

15

A No.

16

Q Did he ask you how many days he worked for you?

17

A No.

18

Q He didn't ask you these questions; and this

19

is news to you for the first time?

20

A Yes.

21

Q Do you know approximately when he worked for

22

you?

23

A In the Summer. You just read it off to me.

24

Q Would it be between the dates of July 28th and

25

August 22nd?

Vorcheimer-cross

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A Yes.

3

4

Q Those are the dates you say Mr. Gelfand was there; isn't that true?

5

A Right.

6

7

Q And those are the times that you allegedly paid him five or six times; is that right?

8

A Yes.

9

10

Q And you were making payments to inspectors once a week; isn't that correct?

11

A That's correct.

12

13

14

Q Now, tell me this, sir, Are you telling this Court that you actually remember paying him five or six times between July 28th to August 22nd; yes or no?

15

A Yes.

16

17

Q You remember those dates in your mind, they are implanted in your mind; isn't that true?

18

A No.

19

20

Q But you remember the times, you remember the times, don't you?

21

A Yes.

22

23

Q You realize between July 28th and August 22nd is less than one month?

24

A Yes, sir.

25

Q You realize that, don't you?

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Vorcheimer-cross

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A Yes.

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Q How many Fridays do you have between July 28th and August 22nd? It doesn't take long, what are you, President of the company, how many Fridays do you have?

A Five.

Q You start off with July 28th, and I tell you that August 1st is the first Friday; August 8th the second Friday; August 15th is the third Friday, and August 22nd is the fourth Friday. There is only four Fridays, you agree with that?

A Yes.

Q So that are you now saying that you still paid him five or six times, because it's implanted in your mind, sir; you want to change that, don't you?

A I guess so.

MR. CARTER: I object to that.

Q As a matter of fact, if I told you now that between those dates, between July 20th and August 22nd, he wasn't there between August 4th and August 15th, you would revise your statement again and say, well, maybe I only paid him once or twice; isn't that so?

A I guess so.

Q You don't want to answer it.

Aren't you lumping in Mr. Gelfand with all

Vorcheimer-cross

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A Right.

Q Just you and the inspector?

A Right.

Q You don't dislike inspectors? Do they cost you money?

A Yes.

Q Ok. Do they sometimes when drippings of dirty water goes on meat, it could cause immediate contamination?

A Yes.

Q And they bring it to your attention and they make you clean the leaky pipes?

A Yes.

Q All this cost money, doesn't it?

A Yes.

Q They are a nuisance.

A Yes.

Q Isn't there a general dislike, seizing dislike for inspectors among the meat packers?

A Yes.

Q And those are the reasons, aren't they, which I gave with regard --

A There are other reasons.

Q By the way, sir, did this man ever close your premises down?

AFTERNOON SESSION
(1:40 p.m.)

LEONARD KATZ, called as a witness,
having been duly sworn by the Clerk of the Court,
testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q By whom are you employed?

A AAA Meat.

Q What is your connection with that corporation?

A President.

Q And what does that corporation do?

A Fabricates fresh meat.

Q The meat you fabricate, do you receive that
meat from inside or outside the State of New York?

A Locally and the West.

Q Since the enactment of the Wholesome Meat Act
in 1967, has your plant been receiving federal inspections?

A Yes, sir.

Q Did you apply for federal inspection?

A Yes, sir.

Q Was federal inspection granted?

A Yes.

Q Pursuant to that Act, were federal inspectors
assigned from time to time to your plant?

1
2 plant, does he point out violations?

3 A If there is, he points it out.

4 Q If there are violations, you correct those
5 violations?

6 A Yes.

7 MR. GIOVANAZZI: Judge, I am going to --
8 object to the leading.

9 THE COURT: Proceed, please.

10 A Yes, certain violations that has to be done
11 we fix either immediately or another time.

12 Q Do you know a person by the name of Alexander
13 Gelfand?

14 A Yes.

15 Q Was he assigned as an inspector of your plant?

16 A Yes.

17 Q Do you see him in court today?

18 A Yes, sir.

19 Q And which person is he?

20 A On the left side.

21 Q Indicating the defendant, Mr. Gelfand.

22 Mr. Katz, did you ever have occasion during
23 the time Mr. Gelfand was assigned to your plant to make any
24 payment of money or other valuable things to him?

25 A Yes.

Katz-direct

Q Approximately when did that occur?

A At the time that he was assigned to my plant.

Q Was he assigned to your plant more than once?

A Yes.

MR. GIOVANAZZI: Judge, I am going to object, if your Honor pleases. According to my bill of particulars he was assigned once only. That was the answer.

THE COURT: Overruled. You may proceed.

Bill of particulars related only to those days charged in the indictment. You now have all the records of the government.

MR. GIOVANAZZI: I also made a demand with regard to other similar acts, and Mr. Katz's name did not appear on there, nor did any dates, and I have all the other similar acts listed by the prosecutor's office.

THE COURT: Proceed.

Q Was Mr. Gelfand assigned to your plant as an inspector on more than one occasion?

A Yes, sir.

Q And on each of the occasions with respect to all the occasions that Mr. Gelfand was assigned to your plant did you make payments to him?

Katz-direct

1
2 Q When you say "harassed," what do you mean by
3 that?

4 A Get violations.

5 MR. GIOVANAZZI: I am going to move to strike.
6 Are we talking about Mr. Gelfand now or other
7 inspectors?

8 THE COURT: Try to be specific now as to
9 this defendant.

10 MR. CARTER: Sure.

11 Q When you say you were harassed, do you mean
12 by this particular inspector or by other inspectors?

13 A I would say that I was harassed by this par-
14 ticular inspector, one thing that I should take care at the
15 end of the week.

16 Q How did you know to pay Mr. Gelfand at the
17 end of the week?

18 A He indicated I should take care of him.

19 Q How did he indicate that to you?

20 A I see him the end of the week.

21 I want to point out one thing. The last Mr.
22 Gelfand was my inspector, at that time I did not take care
23 of him, the last before previous. What I'm talk'ing about
24 is 1965. He was a part-time inspector for t-rew weeks,
25 that's all.

Katz-direct

1
2 Q Was it during the period Mr. Gelfand was a
3 part-time inspector that you made the payments to Mr. Gel-
4 fand?

5 MR. GIOVANAZZI: Objection, if your Honor
6 please, unless he specifies dates.

7 THE COURT: Ask him specifically with respect
8 to those dates that are charged, did he make any
9 payments during that period.

10 Q Specifically with respect to the period
11 beginning approximately August 3rd of 1975 and ending in
12 September of 1975.

13 A Those dates.

14 Q When you answered '65 -- or did you mean '75?

15 A '75.

16 THE COURT: Did you pay him during that
17 period from August 3rd 1975 to September, 1975?
18 Did you pay him?

19 THE WITNESS: Yes, your Honor, those dates,
20 yes.

21 THE COURT: The fact that I ask a question
22 doesn't mean anything. I am just trying to get the
23 record straight. I don't care one way or the other
24 whether this defendant is acquitted or not; that's
25 entirely up to you. I just want the record straight.

Katz-direct

Proceed and let's try to get a straight

record.

BY MR. CARTER:

Q Did there come a time when your company plead
guilty to paying the inspectors?

A Yes.

Q And was that as a result of an agreement that
you reached with the U.S. Government?

A Yes.

Q And as part of that agreement was your company
allowed to plead guilty rather than you as an individual?

A Yes.

(Continued on the next page.)

#6 fold

1
2 Q And as part of that agreement, was your company
3 allowed to pay a fine?

4 A Yes.

5 Q And pursuant to that agreement, did you consent
6 to provide information to the United States Government about
7 all the payments you made to inspectors?

8 A Yes, sir.

9 MR. CARTER: I have no further questions.

10 THE COURT: How much did you pay him each week?

11 THE WITNESS: 1975 I paid him between \$35 and
12 \$50, I don't remember exactly. I would say between
13 \$35 and \$50.00.

14 CROSS-EXAMINATION

15 BY MR. GIOVANAZZI:

16 Q Sir, you said you paid him money and you don't
17 remember how much money you paid him.

18 A Yes, sir.

19 Q When you testified previously you said no,
20 1975 was the last time I didn't pay him. Was the last time
21 that this man ever worked for you during August up to
22 September 27th of 1975, that's the last time that he worked
23 for you?

24 A No.

25 Q When else did he work for you?

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A In 1976.

Q When did he work for you?

A 1976, just before this scandal came apart, he was my inspector.

Q You are now sure?

A Yes.

Q How long was he your inspector?

A A month, six weeks.

Q You are not sure?

A There are records. I don't exactly remember; a couple of weeks.

Q Tell me this, Mr. Katz, are you guessing now?

A I am not guessing. I just don't remember exactly if it was three weeks or two months.

Q You don't know whether it was one week either, do you?

A It was more than one week.

Q You are sure that your mind can reflect back and say that this man actually worked for you back in 1975; are you sure of that?

A Yes.

Q You didn't tell this to Mr. Dawson, did you, sir? Remember when you talked to Mr. Dawson, he's the U.S. attorney, you didn't tell him that?

2 A If he asked me I told him.

3 Q Did you tell him that's my question? Did you
4 tell him that this man worked for you that period of time;
5 yesor no?

6 A As I stated if he asked me.

7 Q Did you or did you not tell him, that's my
8 question, sir?

9 A If he asked me about Mr. Gelfand that he
10 worked, I would have told him yes, he did.

11 Q Let's get back to the August period. August
12 3rd to September 27th. How many payments did you make, how
13 many times did you pay Mr. Gelfand?

14 A Every week once.

15 Q Tell the jury how many weeks would that be?

16 A Three weeks.

17 Q According to your memory?

18 A It would be three times.

19 Q Three times. You say about three times?

20 A Every week once.

21 Q When the prosecutor asked you whether he was
22 working in your place from August 3rd to September 27th,
23 that's almost two months, isn't it; August, that's what
24 the indictment reads, from on or about between August 3rd,
25 1975, and September 27th, 1975, that's about two months, isn't

1
2 it?

3 A It's almost two months, it's every week once.

4 Q So if it's every week once, you paid him eight
5 or nine times?

6 A Yes.

7 Q Now, you remember it's eight or nine times.

8 A I said every week once.

9 Q Mr. Katz, please. If you say it was eight or
10 nine times, then it's eight or nine weeks that he received
11 money; isn't that correct?

12 A Correct.

13 Q Now, tell me this. Are you aware of the fact
14 that during that period that the only time he worked for you
15 even though the indictment reads from August 3rd to September
16 27th, that the only time he worked for you was between
17 the dates of August 4th, to August 15th, are you aware of
18 that, sir? Two whole weeks he worked for you during that
19 two month period. Are you aware of that?

20 A If he worked two weeks I gave him two payments;
21 if he worked eight weeks I gave him two payments.

22 Q Are you lumping all of the inspectors together?
23 And saying if he's the meat inspector, he's a bad man; are
24 you saying that?

25 A No, sir.

1
2 you have a question before the witness?

3 MR. GIOVANAZZI: I withdraw the last question.

4 Did you pay him on August 25?

5 A Was that on a Friday?

6 Q Well, let me see.

7 You paid him on August 15th, that's a Friday?

8 A If it was on a Friday, most of my payments are
9 made on a Friday.

10 Q You don't know whether you paid him nine times
11 at that point or two times -- I withdraw that.

12 After I told you he only worked in your place
13 for two weeks now are you still telling the jury that you
14 paid this man nine times, or are you telling this jury that you
15 have been paying inspectors on occasion every Friday; is
16 that what you are telling this jury that you have been
17 paying inspectors every Friday?

18 THE COURT: Sustained.

19 He didn't say he paid nine times.

20 Q (Mr. Giovanazzi continuing) - you made your
21 payments on Friday, sir?

22 A Yes.

23 Q You named almost every inspector that worked
24 in your place taking money, almost everyone, didn't you?

25 A I named every inspector.

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A I don't know, but my name appeared.

Q Your name appeared with regard to a crime?

A Yes. That I was bribing the inspectors.

Q Didn't he tell you at the time that an under-cover agent was the source?

MR. CARTER: Objection, based on our discussion at the sidebar.

Q Did your attorney --

MR. CARTER: I have an objection and I was waiting for a ruling.

THE COURT: Sustained.

MR. GIOVANAZZI: Can I ask him on what basis the attorney told him his name came up?

THE COURT: Sustained.

MR. GIOVANAZZI: All right.

Q On August 18th, 1975, do you know who the inspector was?

A (No response.)

Q August 18, 1975.

A August 5th, I don't remember.

Q How about August 18th through August 29th, do you know your inspector was then?

A I don't remember.

Q How about from September 1st to the end of

1
2 September, do you remember who your inspector actually was?

3 A September when?

4 Q September, 1975, do you know who your inspector
5 actually was?

6 A You mentioned before Mr. Gelfand was --

7 Q I didn't mention, I am asking you.

8 A I don't remember, sir.

9 It's all on the records. I don't remember the
10 dates when I was inspected.

11 MR. GIOVANAZZI: Judge, I have no further questions
12 of this witness.

13 THE COURT: Please redirect.

14 REDIRECT EXAMINATION

15 BY MR. CARTER:

16 Q When you were asked to come to Mr. Dawson's
17 office, were you asked to identify some photographs --

18 THE COURT: No, I don't want to get involved
19 with that.

20 Q You were asked whether or not you named practically
21 all of the inspectors --

22 MR. GIOVANAZZI: Objection, he is leading the
23 witness.

24 THE COURT: I will permit it.

25 Q You were asked whether or not you had named

1 3 MR. CARTER: Yes. They will reflect --

2 THE COURT: The jury will decide what they
3 reflect.

4 Is there anything else the Government wishes
5 to put in at this time?

6 MR. CARTER: No.

7 THE COURT: Decision will be reserved on motions.
8 You can make your motions subsequently.

9 I will hear from defense counsel. Do you want
10 to introduce any evidence?

11 MR. GIOVANAZZI: May I approach the bench?

12 THE COURT: Yes.

13 Go out and take a rest for a few minutes.

14 (The jury left the courtroom.)

15 Do you want to take your recess now?

16 MR. CARTER: Yes, if I may.

17 THE COURT: Take a recess.

18 THE CLERK: Court proposed charge marked as
19 Court Exhibit 1.

20 Copies were given to attorneys.

21 (Recess taken at this time.)

22 THE COURT: Do you have your witness ready?

23 MR. GIOVANAZZI: No, I was going to ask you --
24 I have a fantastic headache, I was wondering if we
25 can sum up tomorrow morning.

1 (Jury discharged.)

2 THE COURT: Any motions?

3 MR. GIOVANAZZI: Judge, I respectfully move
4 to have the jury verdict set aside on the basis that
5 the verdict is contrary to the evidence and contrary
6 to the law.

7 THE COURT: Denied. Any motion as to bail?

8 MR. GIOVANAZZI: I will respectfully ask the
9 Court to continue the bail on Mr. Gelfand.

10 MR. CARTER: The Government has no objection.

11 THE COURT: Bail continued. Sentencing will be
12 January 7th at 9:30. You can have the sentence report
13 next week. Have the defendant report tomorrow to
14 probation so they can start on the report immediately.

15 MR. GIOVANAZZI: Where is that?

16 THE CLERK: The third floor.

17 THE COURT: He will be sentenced on the 7th
18 of January. Report 10:00 o'clock to probation.

19 * * *

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Charge of the Court

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THE COURT: Ladies and Gentlemen, I am now going to tell you what the law is and I want you to follow my instructions. You are the sole judges of the facts. Anything I have done that has indicated that I have any view as to the guilt or innocence of this defendant, put it out of your minds. I have no view -- no view at all as to whether he is guilty or innocent. My sole function is to see that he gets a fair trial in accordance with the evidence and the law.

There were a number of occasions where I sustained motions to strike -- that means you will ignore that testimony -- and I gave you instructions with respect to certain testimony, and you remember that if you want further instructions on the law I will give it to you of course.

Your own recollections will probably be fairly good with respect to what the witnesses said and what the stipulations were. But if you want any details on that, just send in a note and we will try to locate it for you. Try to be very specific. If you want any of the exhibits, send out a note and we will send them in and you can use them yourselves.

The fact that the prosecution was brought in the name of the United States, does not entitle the

5

Charge of the Court

Government any greater weight or influence than any other litigant would have. Everybody is equal in this court. Nobody is entitled to any sympathy. Nobody is entitled to any favor. The indictment is a way of bringing a charge before the Court. Do not speculate as to what was before the Grand Jury or what other evidence there was or why the Grand Jury did this, that or any other thing. You are only trying the specific charges that are before you. This defendant has pleaded not guilty. He is therefore presumed to be innocent. A presumption of innocence remains with him throughout the trial and must be considered by you in your deliberations. The Government has the burden of proving guilt beyond a reasonable doubt with respect to every element of each of the crimes the defendant is accused of committing. A defendant does not have to submit any evidence at all, because he is presumed to be innocent.

(Continued on next page)

Charge of the Court

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2 The law does not compel a defendant in a
3 criminal case to testify. No inference of any kind
4 adverse to the defendant may be drawn from the fact
5 that this defendant did not testify in his own behalf.
6 Forget that. Is that clear?

7 The burden of proof beyond a reasonable doubt
8 lies with the Government and continues throughout the
9 trial. A reasonable doubt means a doubt sufficient
10 to cause a prudent person to hesitate to act in the
11 most important affair of his life.

12 Finding a person to be guilty of a felony and
13 subjecting him to the possibility of criminal penalties
14 is serious, and you will consider that fact in deciding
15 whether you have a reasonable doubt. Nevertheless,
16 if you are convinced beyond a reasonable doubt of the
17 defendant's guilt, you should find him guilty and should
18 not be swayed by sympathy. The question of possible
19 penalties is for the Court, not for you. Don't concern
20 yourselves with it.

21 You will have to, in evaluating the evidence,
22 rely upon your common sense and general experience.
23 This defendant is charged with four separate crimes
24 or counts arising from the payments alleged to have
25 been received by him during 1973 and 1974. They are

7

Charge of the Court

crimes under the Federal Meat Inspection Act, enacted in 1967, requiring that meat processing establishments be inspected. Each one of these counts has to be separately considered by you and a verdict will have to be returned, guilty or not guilty, with respect to each of the four counts. You can find him guilty on one or more or not guilty on all, bring them out all at one or one at a time. There was evidence of one act of taking -- that is the taking of monies in a period not charged in the indictment. This evidence may be used by you as evidence of lack of mistake or plan or of intent or opportunity or of identity of this particular defendant as one of the people who took during the time charged. You may not conclude from the act, however, that the defendant has a bad character and that, therefore he did the bad act charged.

The first count reads:

"From on or about and between the 29th day of July, 1975, and the 22nd day of August, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Alexander Gelfand, unlawfully, willfully and knowingly did receive and accept from Paulaus Packing Company Incorporated, money

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2 and other things of value, namely approximately \$30
3 weekly.

4 The Second Count is the same, except it charges
5 that between July 28th, 1975 and August 23rd, 1975,
6 the defendant received \$50 weekly from J & N Vorcheimer
7 Incorporated.

8 The Third Count simply charges that between
9 July 29th, 1975 and August 23rd, 1975, the defendant
10 received \$50 weekly from Cumberland Provisions
11 Incorporated, and,

12 The Fourth Count charges that between August 3rd,
13 1975 and September 27th, 1975, the defendant received
14 \$50 weekly from AAA Meat Provisions Inc.

15 The exact times and the exact amounts are not
16 critical. It has to be approximately. If, for
17 example, the indictment charged \$30 a week and the
18 defendant knowingly received \$50 a week, or vice versa,
19 he would still be guilty as charged, and the same
20 thing is true with respect to the dates.

21 Each count charges that he violated Section 622
22 of Title 21 of the United States Code dealing with
23 meat inspection and the statute reads as follows:

24 "Any meat inspector of the United States who
25 shall accept any money, gift, or other thing of value
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2 from any person, firm or corporation, or officers,
3 agents or employees thereof, or shall receive from
4 any person, firm or corporation engaged in commerce
5 any gift, money or other thing of value, given with
6 any purpose or intent whatsoever, shall be guilty of
7 a crime."

8 Now, in order to find a person guilty under
9 that statute, you have to find three things beyond
10 a reasonable doubt:

11 First, that the defendant was authorized by
12 the United States to perform meat inspection duties.
13 As to this element there is no dispute.

14 Second, that the corporation which allegedly
15 gave him the money was engaged in interstate commerce
16 in the United States and its meat was inspected by the
17 United States Department of Agriculture. As to this,
18 there is no dispute that the meat came in large
19 parcels outside the state and some of it was shipped
20 outside the state, so this element is not disputed.

21 Now the third element, which is disputed, is that
22 the defendant did accept money from this corporation
23 in connection with or arising out of his official
24 duties. Under the terms of the statute the purpose or
25 intent with which the money was given to the defendant,

1 or was accepted by him is irrelevant to a finding of
2 guilt. Money accepted by him from the corporation he
3 was inspecting for any purpose, is sufficient to
4 establish the crime charged. You must find that he
5 received the money knowingly and purposefully, and
6 not by accident, mistake, inadvertence, or misunderstand-
7 ing. It is not a defense that the defendant was not
8 influenced in the performance of his work by payments
9 or that he was a good and efficient inspector. It
10 does not make any difference if he was the best
11 inspector in the country, and if he did his work
12 absolutely perfectly to protect the public, if he took
13 this money then under the statute he would be guilty.
14

15 Now, obviously, a difficult aspect of your
16 duty is to determine the credibility of the witnesses.
17 You can consider the witnesses relationship to the
18 Government, the witnesses bias or interest in the
19 outcome of the case, their manner while testifying,
20 their candor and intelligence, as you observed it,
21 the extent to which the witness was corroborating or
22 contradicted by other testimony or exhibits, whether
23 the witness changed the testimony under cross-
24 examination and so on.

25 If you think a witness has willfully sworn

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2 falsely to you, you can ignore his testimony completely,
3 but remember a witness may be accurate with respect
4 to part of what he says and inaccurate or have a
5 faulty memory with respect to other parts of what he
6 says, so you have to take all of that into account.

7 The chief Government witnesses in this case
8 were employees or officers of corporations which were
9 admitted accomplices in the crimes in this case.
10 That was also true of the witness for the defendant.
11 The witnesses for the Government testified that the
12 defendant took money from their corporation in
13 connection with his services. The witness for the
14 defendants said that he didn't take it during the
15 time he worked for his corporation.

16 In evaluating the testimony, you should view
17 it with caution and scrutinize it carefully. The
18 association of these witnesses with criminal activities
19 they show defects in their characters, making them
20 more prone to lie.

21 In addition, they may curry favor with the
22 Government in order to receive favorable treatment,
23 and to avoid or minimize penalties themselves or to
24 their corporations. The defendant's witness is to
25 be treated the same as all other witnesses.

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2 If you wish to have some of the testimony
3 repeated, as I say, send in a note. You're entitled
4 to your own opinions, but you should exchange views
5 with your fellow jurors and listen carefully to each
6 other. Don't hesitate to change your opinion if you
7 think somebody else is right and you are wrong. But
8 remember, you are each individually responsible for the
9 verdict and that verdict has to be unanimous.

10 The oath you took sums up your duty, that with-
11 out fear or favor to any person, you will well and
12 truly try the issues before you, according to the facts
13 as you have heard them and the laws of the United
14 States.

15 Is there any objection to my releasing the
16 three alternates?

17 MR. GIOVANAZZO: No objection, your Honor.

18 MR. CARTER: No objection.

19 THE COURT: The three alternates are released.
20 Check in downstairs and then you can go home. Do not
21 discuss this case with anyone, among yourselves or
22 with anyone else, until the verdict is in. Is that
23 clear?

24 Thank you very much for your help.

25 Would the attorneys like to come to the side bar,

GIOVINAZZO

AFFIDAVIT OF PERSONAL SERVICE

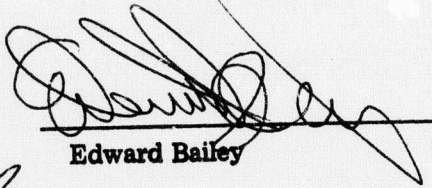
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

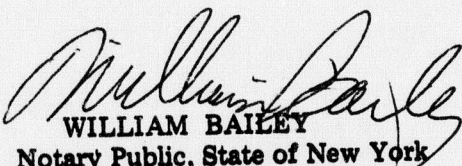
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10810. That on the 30th day of MARCH, 1977 at No. 5 Cadman Plaza East, Brooklyn, NY

deponent served the within *Appendix*
upon U.S. Atty., Eastern District of NY

the Appellee herein, by delivering true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
30 day of March 1977.


Edward Bailey


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978